

DECISION

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the "Act"), and dealt with an Application for Dispute Resolution (Application) for:

- an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act (\$100.00)

Service of Notice of Dispute Resolution Proceeding - Direct Request

The applicant submitted a signed Proof of Service Landlord's Notice of Direct Request Proceeding which declares that the tenant was served with the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) in accordance with section 43 of the *Residential Tenancy Regulation* (the Regulation). The applicant provided a written copy of their agreement to send documents by e-mail. The applicant also submitted a copy of the outgoing e-mail containing the Direct Request documents as attachments to confirm this service.

Based on the written submissions of the landlord and in accordance with section 44 of the Regulation I find that Tenant C.K. was served on October 3, 2022, by pre-agreed e-mail, and is deemed to have received the Proceeding Package on October 6, 2022, the third day after the e-mailing.

Issue(s) to be decided

Is the applicant entitled to an Order of Possession based on unpaid rent?

Is the applicant entitled to recover the filing fee for this application from the tenant?
(\$100.00)

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The applicant submitted the following evidentiary material:

- A copy of a residential tenancy agreement which names a landlord who is not the applicant and was signed by the tenant on September 18, 2020, indicating a monthly rent of \$760.00, due on the first day of the month for a tenancy commencing on November 1, 2020;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated September 6, 2022 for \$3,857.40 in unpaid rent. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of September 19, 2022;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenant's door at 10:11 am on September 6, 2022
- A Direct Request Worksheet showing what months' rent are outstanding. The Direct Request does not specify the amount of the monthly rent being charged.

Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the applicant to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the applicant cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

I have reviewed all documentary evidence and I find that the landlords' names on the tenancy agreement (N.G.I. and N.L.P.) do not match the landlord's name on the Application for Dispute Resolution (N.C.H.P.L.). There is also no evidence or documentation showing that the applicant is the owner of the rental property or is otherwise entitled to any orders that may result from this application.

As this is an *ex parte* proceeding that does not allow for any clarification of the facts, I have to be satisfied with the documentation presented. The discrepancy in the landlord's name raises a question that cannot be addressed in a Direct Request Proceeding.

For this reason, the applicant's request for an Order of Possession for unpaid rent is dismissed with leave to reapply.

As the applicant was not successful in this application, I find that the applicant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The applicant's request for an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act is dismissed, with leave to reapply. This tenancy will continue until ended in accordance with the Act.

The applicant's request for authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act is dismissed, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 3, 2022

Residential Tenancy Branch